IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPLICATION NO. 8524 OF 2005
IN
CRIMINAL WRIT PETITION NO. 3172 OF 2005

Paresh Purshottam Gor .. Applicant
(brother of the detenu)

Vs.

The State of Maharashtra & Ors. ..Respondents

Mr. Uday Warunjikar with Mr. Y.M. Rohira for the Applicant.
Mr. D.S. Mhaispurkar, APP for State.

CORAM : B. H. MARLAPALLE &
SMT. R.S. DALVI,JJ.
Date : January 10, 2006.

P.C.:

1. Heard Mr. Warunjikar with Mr. Rohira, the learned counsel for the applicant and Mr.Mhaispurkar, the learned APP for State.

2. The detenu Vipul Purshottam Gor, who is the brother of the petitioner, has been detained under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 by the Competent Authority vide her order dated 21/9/2005 and the said order has been challenged in Criminal Writ Petition No.3172 of 2005 which has been admitted by us today and has been fixed for final hearing on 6th March, 2006 peremptorily. Pending the said petition, the applicant prays for being released the detenu on bail by this application.

3. It is submitted that an application under Section 127B of the Customs Act 1962 has been admitted by the Settlement Commission vide its order dated 6/10/2005 and on deposit of the required amount, the goods have been released. Reliance has also been placed on Section 127H of the Customs Act, 1962 regarding immunity from any other penal action. In support of this application Mr. Warunjikar also submitted that the goods were seized on 27th January, 2005 and the order of detention has been passed almost after nine months and more particularly after the detenu filed an application under Section 127B of the Customs Act, 1962 before the Settlement Commission on or about 12/8/2005.

4. We have noted that the order of detention was challenged in Writ Petition (Criminal) No.342 of 2005 before the Apex Court and the same petition was withdrawn on 16/12/2005 so as to enable the petitioner to move this court. In the detention order dated 21/9/2005 it has been clarified that the detenu has the right to make representation to the Detaining Authority or the State Government or the Central Government. Undoubtedly, such representation is required to be considered by the respective authorities in view of the scheme of Section 11 of the Conservation of Foreign Exchange and Prevention of

Smuggling Activities Act, 1974 so as to examine whether the detention order needs to be revoked. Admittedly, as of today, no order under Section 127H of the Customs Act, 1962 has been passed in favour of the detenu and the proceedings initiated under Section 127B of the said Customs Act have been admitted by the Settlement Commissioner. Even otherwise all these grounds could be raised in the representation to be submitted by the detenu to the authorities concerned i.e. the Detaining Authority or the State Government or the Central Government as the case may be. We are, therefore, not inclined to entertain this application at this stage, more so when Criminal Writ Petition No.3172 of 2005 has been already fixed for final hearing on 6th March, 2006 peremptorily.

5. The application is, therefore, rejected. In case the detenu submits his representation within a period of one week as per the right granted to him under the detention order, we direct that the said representation shall be considered and decided by the concerned authority within a period of three weeks from its receipt, on its own merits.

(Smt.R.S. Dalvi,J.) **(B.H. Marlapalle, J.)**